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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,255	12/12/2003	Seppo Nissila	187-73	9796
23869	7590	06/30/2005	EXAMINER	
HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791			MALLARI, PATRICIA C	
		ART UNIT		PAPER NUMBER
		3736		

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/735,255	NISSILA, SEPO
	Examiner	Art Unit
	Patricia C. Mallari	3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 April 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12 December 2003 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

This is a final Office action. No new grounds of rejection have been made.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification fails to provide adequate description of the step of or means for packing the measured heart beat interval information such that the duration of the sound collage is shorter than the time spent for measuring the heart beat intervals, as recited by claims 1 and 10 of the application. Paragraphs 0014 and 0033 of the specification state that packing can be performed by averaging the heart beat interval information, and that the packed data is shorter in duration than the actual measuring time. However, the description still fails to explain how such averaging results in a shorter duration of the packed data or how the duration of the packed data is reduced at all. Additionally, see the examiner's response to applicant's arguments below.

Response to Arguments

Applicant's arguments filed 4/13/05 have been fully considered but they are not persuasive.

The applicant states that the term "packed data" means information that has been compressed and that methods of data packing or compression are well known in the art (pp.7-8 of the applicant' response). However, as commonly used in the art, the term data compression refers to a minimization of space or memory, rather than "duration", occupied by data and allows "playback" of the original data rather than the "packed" or compressed version. Furthermore, data compression is generally accomplished by means of encoding. A process of averaging, as described in paragraphs 0014 and 0033 of the applicant' specification fail to represent "packing" or data compression as generally used in the art. The process does not allow playback of the original data, and averaging is not a means of encoding. The applicant's argument that the term "packing" refers to the well-known data compression is unconvincing.

The applicant further contends that the specification does not show how the duration of the packed data is reduced but that the duration of packed data is itself shorter than the data in unpacked form and that further describes how averaging results in a shorter duration (p. 9 of the applicant's response). With respect to averaging, paragraph 0014 merely states, "the package could be implemented by averaging, for instance, whereby the heart beat interval data of a given time interval is represented by the mean heart rate of said time." Paragraph 0033 of the applicant's specification also recites, "The packing can be performed by averaging the heart beat interval information, for instance. In packing the heart beat interval information is compressed such that the packed data is shorter in duration than the actual measuring time." Such averaging, wherein paragraph 0014 states that the product is a mean heart rate of time, would

result in a single value, and it is unclear from this description how one value translates into enough information for a five-minute piece of music. The explanation of averaging provided on p.9 is not present in the applicant's original disclosure nor is it obvious from either of these two paragraphs.

On p. 8 of the applicant's response, the applicant provides a listing of sections of the specification in which they contend various embodiments of the step of or means for encoding the packed information into a sound collage are disclosed. The majority of the specification addresses creation of the sound collage but do not mention the data being "packed" versus "unpacked." Data packing is disclosed at length only in paragraphs 0014 and 0033 of the specification, with a minor mention in paragraph 0026 of the specification, which states, "prior to transfer, the information can be packed or the data can be transferred unpacked."

The applicant is invited to contact the examiner at (571) 272-4729 for further discussion of this issue

Conclusion

Again, at this point, no prior art has been applied. However, it is noted that it is unclear what constitutes the step of packing in claim 1 and the means for packing in claim 10 as described above. Consideration of prior art will be revisited upon resolution of the enablement rejection of claims 1-21 under 35 U.S.C. 112, 1st paragraph.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia C. Mallari whose telephone number is (571) 272-4729. The examiner can normally be reached on Monday-Friday 10:00 am-6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patricia Mallari
Patricia Mallari
Patent Examiner
Art Unit 3736

Robert L. Nasser L
ROBERT L. NASSER
PRIMARY EXAMINER